

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

BRIANNA ADELA HAMMER

Applicant for Registered Nurse License

Respondent.

Case No. 2013-128

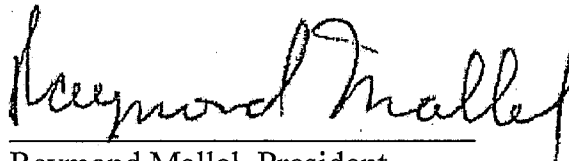
OAH No. 2012090323

DECISION

The attached proposed decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on March 15, 2013.

IT IS SO ORDERED this 14th day of February 2013.

A handwritten signature in black ink, appearing to read "Raymond Mallel", written over a horizontal line.

Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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In the Matter of the Statement of Issues  
Against:

BRIANNA ADELA HAMMER

Respondent.

Case No. 2013-128

OAH No. 2012090323

**PROPOSED DECISION**

Administrative Law Judge Jill Schlichtmann, Office of Administrative Hearings, heard this matter on November 19, 2012, in Oakland, California.

Judith J. Loach, Deputy Attorney General, represented the Board of Registered Nursing.

Edgardo Gonzalez, Attorney at Law, represented Brianna Adela Hammer, who was present throughout the administrative hearing.

The matter was submitted for decision on November 19, 2012.

**FACTUAL FINDINGS**

1. Louise R. Bailey, M.Ed., R.N., made the statement of issues in her official capacity as the Executive Officer of the Board of Registered Nursing (Board).
2. On December 7, 2011, the Board received an application for a licensure by examination from Brianna Adela Hammer (respondent). The Board denied the application on February 27, 2012.
3. On April 25, 2002, in the Superior Court of California, County of Santa Clara, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of 0.08 percent or greater). Imposition of sentence was suspended and respondent was placed on probation for a period of three years, on conditions that included serving six days in the weekend work program, completing the first offender drinking driver program, and paying various fines and fees.

The circumstances underlying the conviction are that on May 4, 2001, respondent was observed by a highway patrol officer driving 80 miles per hour on Highway 101 in San Jose. When respondent was pulled over, she exhibited signs of alcohol intoxication and failed the field sobriety tests. Respondent's blood alcohol content was measured at 0.08 and 0.086 percent. Respondent was cooperative with the officers and admitted having consumed beer before driving.

Respondent successfully completed all of the terms of her probation, and on October 7, 2009, the court granted respondent's petition to expunge the conviction pursuant to Penal Code section 1203.4.

4. On July 18, 2002, in the Superior Court of California, County of Santa Clara, respondent was convicted of violating Vehicle Code section 14601.5, subdivision (a) (driving on a suspended license). Imposition of sentence was suspended and respondent was placed on probation for a period of two years, on conditions that included serving five days in the weekend work program and paying various fines and fees.

\* The circumstances underlying this conviction are that on December 1, 2001, respondent drove while her license was suspended by the Department of Motor Vehicles.

Respondent successfully completed all of the terms of her probation, and on October 7, 2009, the court granted respondent's petition to expunge the conviction pursuant to Penal Code section 1203.4.

5. On June 15, 1999, respondent possessed and ingested methamphetamine.<sup>1</sup>

#### *Respondent's Evidence*

6. Respondent testified candidly, and expressed sincere remorse regarding the misconduct she committed in her youth. On June 15, 1999, while at a party, respondent was offered a drug which turned out to be methamphetamine. Respondent was 18 years old at the time and made the mistake of taking the drug and possessing a small amount of the drug on her person. Respondent has not ingested or possessed any illegal substances since this incident 13 years ago.

In May 2001, when respondent was 20 years old, she drove after drinking beer and was convicted of driving with a blood alcohol content of over 0.08 percent. As a result of her arrest, her driver's license was restricted by the Department of Motor Vehicles. While her license was restricted, but before she was convicted for driving with a blood alcohol content above the legal limit, she drove to pick up her son, which was not permitted under

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<sup>1</sup> Methamphetamine is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(2), and a dangerous drug pursuant to Business and Professions Code section 4022.

DEC 13 2017

the restriction. Respondent was thereafter convicted of driving on a suspended license. Respondent sincerely regrets these decisions.

7. After these incidents, respondent decided to turn her life around. She recognized that she was behaving immaturely and was heading down the wrong path. Respondent completed the drinking driver program successfully on July 19, 2002. She also successfully completed a nine-month substance abuse program, the Gardener's Women's Wellness Program, on June 17, 2002. In addition, respondent attended Alcoholics Anonymous and Narcotics Anonymous meetings twice weekly between 2001 and 2004. Although respondent has never been drug or alcohol dependent, she learned a tremendous amount about the dangers of drugs and alcohol use during the meetings and she enjoyed the meetings and the camaraderie.

8. On July 26, 2002, respondent completed the dental assisting program at San Jose City College. One of her instructors, Patricia A. Wilson, R.D.A., wrote a letter praising respondent's abilities and attitude on April 24, 2002. Wilson found respondent to exhibit excellent professional qualities and abilities, and to be an enthusiastic learner and a well-rounded individual. Wilson recommended respondent for a scholarship, which she received.

9. On April 26, 2012, another of respondent's instructors from the dental assisting program at San Jose City College, Laura L. Sanchez, C.D.A., R.D.A., M.A., wrote a letter on respondent's behalf. Sanchez reports that respondent demonstrates commitment, determination, intelligence and compassion. Without many resources, respondent succeeded in reaching her academic goals, became a better citizen and contributed to her community in a positive manner. Sanchez is aware that respondent recently graduated from the Evergreen Valley College nursing program, and is extremely proud of respondent's accomplishments.

10. On February 20, 2004, the Committee on Dental Auxiliaries conferred on respondent a registered dental assistant certificate. Respondent had disclosed her criminal convictions to the Committee on Dental Auxiliaries. Respondent's dental assistant registration certificate has never been disciplined. On July 28, 2008, respondent earned her Associate of Science degree in dental assisting from San Jose City College.

11. Between 2002 and 2004, respondent worked successfully as a dental assistant for Sam Photopoulos, D.D.S. in San Jose, California. Respondent was responsible for patient education, taking x-rays and assisting Dr. Photopoulos.

12. In 2004, respondent moved to Modesto, California, where she worked successfully as a dental assistant for Dennis Hobby, D.D.S., until she moved back to San Jose in 2006.

13. Respondent was employed as a dental assistant for Gayatri Sakhrani, D.M.D., beginning in 2006. Dr. Sakhrani testified in support of respondent at hearing, and has written several letters of recommendation for her. Dr. Sakhrani has been licensed in California since 2001. Respondent worked closely with Dr. Sakhrani, assisting with dental procedures, from

2006 until 2010, when she left to attend nursing school. Dr. Sakhrani describes respondent as very professional, always prompt, well-liked by patients, and a team player. Dr. Sakhrani considers respondent to be an excellent employee. She never violated Dr. Sakhrani's trust, never had any issues with drugs or alcohol, and never displayed any kind of character defects. Dr. Sakhrani is aware of respondent's past mistakes, but if she were able to, Dr. Sakhrani would hire respondent back today. Respondent always displayed a high degree of integrity, responsibility and ambition to Dr. Sakhrani. Dr. Sakhrani gives respondent her "wholehearted endorsement."

14. Pastor Timothy Manly of Cummings Park Methodist Church testified on respondent's behalf at hearing and submitted a letter of recommendation. Pastor Manly has known respondent since 2006 when she became a member of Lewis Memorial Methodist Church in San Jose, where he was pastor. Between 2006 and 2010, he was in regular contact with respondent at church, and they have remained in touch. He has been aware of her criminal history, and her goals in life. Respondent served as a Youth Director with the Roundtable Youth Group at Lewis Memorial Methodist Church for two years. She disclosed her poor choices to the girls in the group in an effort to lead them to make better decisions. Pastor Manly is familiar with several young women that respondent counseled who are now in college; he attributes their success in part to respondent's guidance. Respondent was also regularly involved in volunteering to feed the homeless at a shelter through a church program. She volunteered her time at the shelter one Saturday each month between 2007 and 2009.

Pastor Manly has a tremendous amount of respect for respondent and believes she would make a fine nurse. He has no concerns about her having access to controlled substances at this point in her life. She has a son that she cares for and she is very ambitious. Respondent has worked too hard for her career to return to making poor choices. He has never seen respondent use drugs or alcohol and does not believe that has been a part of her life since he has known her.

15. Alicia Okoh, M.P.H., M.S.W., testified at hearing in support of respondent's application. Okoh has been the executive director of Adebanke Community and Cultural Services, for the past 10 years. Adebanke is a non-profit organization that provides case management and educational services to at risk youth.

Okoh has known respondent for more than 20 years. She does not consider respondent to be an alcoholic or drug dependent. Okoh is aware of the poor decisions that respondent made between 1999 and 2001, and has watched her mature into a humble, caring and productive young woman since that time. Respondent made a commitment to change, sought help and surrounded herself with new friends. Respondent has been steadfast in following her dreams and giving back to her community since 2002. Respondent provided countless hours of direct care volunteering at Adebanke between 2006 and 2009. She mentored at risk teenagers, attended field trips with children from group homes, consulted on new projects and assisted with strategic planning. Respondent earned the respect of the teenagers she counseled through Adebanke. Okoh considers respondent to be a strong,

DEC 19 2012

confident and caring individual. For more than 10 years, Okoh has observed respondent demonstrate sound judgment and stability without wavering, and she believes respondent is totally rehabilitated. Okoh considers respondent to be extremely generous and considerate, honest, responsible and compassionate. She has no concerns regarding respondent abusing drugs or alcohol in the future. Okoh believes that respondent will make a terrific nurse.

16. Throughout respondent's childhood, her mother battled a long illness, and her grandmother was primarily responsible for raising her. When her grandmother fell ill in 2005, respondent watched the nurses care for her and decided that she wanted to become a nurse.

17. On December 22, 2011, respondent earned her Associate of Science degree in nursing from Evergreen Valley College. Susan Wetzel, R.N., M.S.N., one of respondent's nursing professors, wrote a letter in support of respondent's application on March 14, 2012. Wetzel reports that respondent successfully met the objectives of the nursing curriculum and was an active member of the Evergreen Valley College Nursing Student Association. Wetzel praises respondent's organizational skills and volunteer work through the student association to improve the nursing profession.

Jackie Keane, R.N., M.S., another member of the nursing faculty at Evergreen Valley College, wrote a character reference for respondent dated October 26, 2011. Keane had the opportunity to work with respondent throughout the nursing program in various capacities. Keane has always found respondent to be open and honest, and caring with patients, families, faculty and staff. Keane considers respondent to be a quality student who was very dedicated to the nursing program. Keane was impressed by respondent's determination to become a nurse. Respondent worked for seven years to get into the nursing program, then juggled a full-time job, schooling and raising a son as a single mother. Keane believes that respondent will be an asset to the nursing profession, and will continue to serve as a positive role model in her community. In the clinical setting, respondent consistently performed at a professional level and patient safety was her priority.

Barbara Tisdale, R.N., M.S.N., another of respondent's nursing instructors at Evergreen Valley College, submitted a letter of recommendation dated November 14, 2011. Tisdale was respondent's clinical instructor for her mental health and advanced medical/surgical rotations, and one of her theory instructors. Tisdale has been impressed with respondent's conscientiousness and integrity. She has proven herself to be responsible and hardworking in the clinical and classroom settings. She consistently demonstrated professionalism, timeliness, honesty, and good work ethics. Respondent shows compassion to her patients and their families. She works independently, but does not hesitate to ask questions. Tisdale recommends respondent without hesitation.

Nancy Lin, R.N., M.S.N., wrote a letter of recommendation for respondent dated November 17, 2011. Lin was respondent's theory and clinical instructor in the spring of 2011. Lin found respondent to be hardworking and to display a strong work ethic and good critical thinking skills. She considers respondent to be honest, conscientious, an effective

team player, and to possess great communication skills. Lin believes respondent will be an asset to the nursing profession.

Sandra DeWolfe, the interim Dean of Nursing at Evergreen Valley College wrote a letter on respondent's behalf dated November 16, 2011. DeWolfe was respondent's theory and clinical instructor in the fall of 2010. In her experience, respondent was honest, professional and hardworking. Respondent received compliments from clients and their families and was a strong client advocate. DeWolfe recommends respondent without hesitation, and feels she will be an asset to the nursing profession.

Felicia Mesa, R.N., M.S.N., C.N.S., is another professor of nursing at Evergreen Valley College and was one of respondent's instructors. Mesa wrote a letter of reference dated November 7, 2011. Mesa considers respondent to be a competent and compassionate nursing student. Respondent exhibited qualities of honesty and professionalism. Mesa believes respondent will be an excellent patient advocate and nurse. She recommends respondent with confidence.

Respondent advised the professors of whom she requested letters that she had made some bad choices in her youth involving the use of drugs and alcohol and that the Board was investigating those instances in evaluating her application.

18. Respondent submitted her clinical performance evaluations which demonstrate that she passed all of the clinical categories as a student at Evergreen Valley College.

19. On March 7, 2012, respondent was admitted to Bachelor of Science nursing program at Pacific Union College. On March 5, 2012, respondent was admitted to San Jose State University to take prerequisite classes for the Master's program in nursing. Respondent is attending classes for these programs currently.

20. Respondent is employed at Highland Hospital as an intern in the nursing administration unit. Her supervisor is aware that the Board has issued this statement of issues. Respondent works on projects involving quality improvement, and patient and family services, but is not involved in patient care.

21. Respondent surrounds herself with friends who are educated, family-oriented, church-going and community-involved professionals. She is very involved with her family, especially with her 15-year-old son. Respondent currently attends church services at the Cathedral of Faith in San Jose.

22. Between June 19, 2010 and July 19, 2010, respondent volunteered her time at a hospital in Nicaragua. She worked with registered nurses in labor and delivery, and in wound care in the emergency room.

23. Respondent volunteered at three events with the Red Cross during the summer of 2012, providing first aid at community events. She plans to continue with this volunteer work.

24. Since August 2012, respondent has been volunteering once per month at the University of California, San Francisco, Medical Research Lab (UCSF), helping with experiments.

25. Respondent hopes to become a registered nurse specializing in wound care. Respondent's long term goal is to obtain her Bachelor of Science and Master's degrees in nursing and become a clinical nurse specializing in oncology with a community health organization.

26. Respondent has demonstrated sincere rehabilitation, and appears to be very dedicated to achieving her goals and giving back to her community.

## LEGAL CONCLUSIONS

### *First Cause for Denial: Criminal Convictions*

1. Business and Professions Code sections 480, subdivision (a)(1), and 2761, subdivisions (a) and (f), authorize the Board to deny an application when the applicant has been convicted of an offense that is substantially related to the qualifications, functions, and duties of a registered nurse. Pursuant to California Code of Regulations, title 16, section 1444, an offense will be considered substantially related to the qualifications, functions and duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness to practice in a manner consistent with the public health, safety or welfare.

Respondent's 2002 conviction for driving with a blood alcohol content over the legal limit, set forth in Factual Finding 3, is substantially related to the qualifications, functions, and duties of a registered nurse because it evidences the potential unfitness to discharge the duties as a registered nurse in a manner consistent with public safety.

Cause for denial of respondent's application therefore exists under Business and Professions Code sections 480, subdivision (a)(1), and 2761, subdivisions (a) and (f), based upon this conviction.

2. Respondent was convicted of driving on a suspended license in 2002. (Factual Finding 4.) This conviction is not substantially related to the qualifications, functions, and duties of a registered nurse because it does not evidence, to a substantial degree, the present or potential unfitness on the part of respondent to discharge her duties as a registered nurse in a manner consistent with public safety.



Accordingly, cause for denial of respondent's application does not exist under Business and Professions Code sections 480, subdivision (a)(1), and 2761, subdivisions (a) and (f), based upon this conviction.

3. Business and Professions Code section 2762, subdivision (c), authorizes the Board to deny an application of an individual who has been convicted of a criminal offense that involves the consumption of alcohol to an extent, or in a manner, dangerous or injurious to him or herself, others, or the public.

Respondent's conviction for driving with a blood alcohol content above the legal limit involved the consumption of alcohol to an extent and in a manner that was dangerous or injurious to herself, others and the general public. Cause for denial of respondent's application therefore exists pursuant Business and Professions Code section 2762, subdivision (c). (Factual Finding 3.)

*Second Cause for Denial: Unprofessional Conduct – Possession of a Controlled Substance or Dangerous Drug*

4. Business and Professions Code section 2761, subdivision (a), authorizes the Board to deny a license to an applicant who has committed unprofessional conduct. Business and Professions Code section 2762, subdivision (a), defines unprofessional conduct to include the illegal possession of a controlled substance or a dangerous drug. (See also, Bus. & Prof. Code, §§ 480, subds. (a)(3)(A) and (a)(3)(B) [commission of an act that if done by a licensee would be grounds for suspension or revocation and conviction of a substantially related crime] and 4060 [unlawful possession of a controlled substance].)

As set forth in Factual Finding 5, respondent illegally possessed a controlled substance/dangerous drug on June 15, 1999. Thus, cause exists to deny respondent's application for a license.

*Third Cause for Denial: Unprofessional Conduct – Use of a Dangerous Drug, Controlled Substance and Alcohol*

5. Business and Professions Code sections 2761, subdivision (a), 2762, subdivision (b) and 480, subdivisions (a)(3)(A) and (a)(3)(B), authorize the Board to deny an application where the applicant has used a dangerous drug, controlled substance or alcohol to the extent, or in a manner dangerous or injurious to herself and/or the public. By reason of the matters set forth in Factual Findings 3 and 5, cause exists to deny respondent's application pursuant to Business and Professions Code sections 2761, subdivision (a), 2762, subdivision (b), and 480, subdivisions (a)(3)(A) and (a)(3)(B).

*Mitigation and Rehabilitation Evidence*

6. It is respondent's burden to establish that she is sufficiently rehabilitated from her past conduct so that it would not be contrary to the public interest to allow her to take the

registered nurse examination, and to grant her application for licensure if she is a successful candidate. In evaluating evidence of rehabilitation, the Board looks to: 1) the nature and severity of the acts or offenses under consideration; 2) the actual or potential harm to the public; 3) actual or potential harm to a patient; 4) prior disciplinary record; 5) the number and variety of current violations; 6) mitigation evidence; 7) rehabilitation evidence; 8) compliance with conditions of court-ordered probation; 9) overall criminal records; 10) the time that has passed since the acts or offenses occurred; and 11) whether the conviction has been expunged pursuant to Penal Code section 1203.4.

Complainant agrees that respondent should be granted a license, but recommends that respondent should be made subject to the Board's standard conditions of probation plus the Board's "rule-out" conditions. Respondent requests that she not be subject to probationary conditions.

Respondent's conviction for driving with a blood alcohol content over the legal limit occurred in 2002, and was expunged in 2009. She ingested and possessed methamphetamine on a single occasion at age 18, on June 15, 1999.

• Respondent was granted a registered dental assistant certificate in 2004 without restriction, and she worked as a registered dental assistant until 2010 without incident or discipline. (Factual Findings 8 through 13.) Indeed, one of her former employers thinks so highly of her that she attended the hearing to testify on respondent's behalf and give her wholehearted endorsement of respondent's application. (Factual Finding 13.)

Respondent pursued her registered nursing education with determination, performed well in the nursing program, and is pursuing an advanced degree in nursing. (Factual Findings 17 through 19, and 25.)

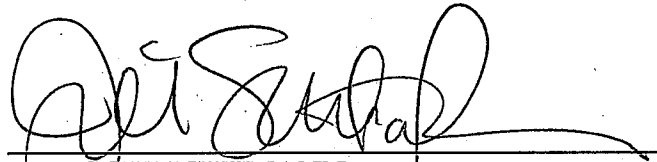
Respondent has become an active and valued member of her church, and has volunteered her time extensively with troubled youth, the homeless and with the poor abroad. She has also volunteered within her chosen profession with the nursing student association, at UCSF and with the Red Cross. (Factual Findings 14, 15, 21 through 24.)

Respondent has earned the respect of her employers, her instructors, her friends and her pastor. In sum, respondent has modeled exemplary behavior as a registered dental assistant, a student and as a citizen since 2002, demonstrating no danger to the public in these arenas. On such a record, there is no public safety consideration that requires protection by this Board during a period of probation. For this reason, it would not be contrary to the public interest to grant respondent's application for licensure by examination, and to issue her a registered nurse license if she successfully completes all licensing requirements.

ORDER

The application of respondent Briana Adela Hammer for licensure by examination is granted. Upon successful completion of the licensure application and all other licensing requirements, a license shall be issued to respondent.

DATED: 12/3/12

  
JILL SCHLICHTMANN  
Administrative Law Judge  
Office of Administrative Hearings

DEC 10 2012  
BANDER  
CLERK

## Exhibit A

First Amended Statement of Issues Case No. 2013-128

1 KAMALA D. HARRIS  
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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

13 **BRIANNA ADELA HAMMER**

14 Applicant.

Case No. 2013-128

15 **FIRST AMENDED STATEMENT OF**  
16 **ISSUES**

16 Complainant alleges:

17 PARTIES

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this First Amended Statement  
19 of Issues solely in her official capacity as the Executive Officer of the Board of Registered  
20 Nursing, Department of Consumer Affairs.

21 2. On or about December 7, 2011, the Board of Registered Nursing, Department of  
22 Consumer Affairs received an application for a registered nurse license from Brianna Adela  
23 Hammer ("Applicant"). On or about November 20, 2011, Brianna Adela Hammer certified under  
24 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
25 application. The Board denied the application on February 27, 2012.

26 JURISDICTION

27 3. This First Amended Statement of Issues is brought before the Board of Registered  
28 Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws.

1 All section references are to the Business and Professions Code unless otherwise indicated.

2 RELEVANT STATUTES

3 4. Section 2761 of the Code states:

4 "The board may take disciplinary action against a certified or licensed nurse or deny an  
5 application for a certificate or license for any of the following:

6 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

7 ...

8 "(f) Conviction of a felony or of any offense substantially related to the qualifications,  
9 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
10 conclusive evidence thereof."

11 ...

12 5. Section 2762 of the Code states:

13 "In addition to other acts constituting unprofessional conduct within the meaning of this  
14 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
15 chapter to do any of the following:

16 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed  
17 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or  
18 administer to another, any controlled substance as defined in Division 10 (commencing with  
19 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as  
20 defined in Section 4022.

21 "(b) Use any controlled substance as defined in Division 10 (commencing with Section  
22 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
23 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
24 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
25 ability to conduct with safety to the public the practice authorized by his or her license.

26 "(c) Be convicted of a criminal offense involving the prescription, consumption, or  
27 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
28 or the possession of, or falsification of a record pertaining to, the substances described in

1 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
2 thereof.”

3  
4 6. Section 2765 of the Code states:

5 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a  
6 charge substantially related to the qualifications, functions and duties of a registered nurse is  
7 deemed to be a conviction within the meaning of this article. The board may order the license or  
8 certificate suspended or revoked, or may decline to issue a license or certificate, when the time  
9 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an  
10 order granting probation is made suspending the imposition of sentence, irrespective of a  
11 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person  
12 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict  
13 of guilty, or dismissing the accusation, information or indictment."

14 7. Section 4060 states, in pertinent part:

15 No person shall possess any controlled substance, except that furnished to a person  
16 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
17 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order  
18 issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner  
19 pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a  
naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either  
subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph  
(5) of, subdivision (a) of Section 4052 . . .

20 8. Section 480 of the Code states:

21 "(a) A board may deny a license regulated by this code on the grounds that the applicant has  
22 one of the following:

23 "(1) Been convicted of a crime. A conviction within the meaning of this section means a  
24 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a  
25 board is permitted to take following the establishment of a conviction may be taken when the  
26 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when  
27 an order granting probation is made suspending the imposition of sentence, irrespective of a  
28 subsequent order under the provisions of Section 1203.4 of the Penal Code.

1 ...  
2 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,  
3 would be grounds for suspension or revocation of license.

4 "(B) The board may deny a license pursuant to this subdivision only if the crime or act  
5 is substantially related to the qualifications, functions, or duties of the business or profession for  
6 which application is made."

7 ...  
8 9. Section 492, provides in relevant part that:

9 Notwithstanding any other provision of law, successful completion of any diversion  
10 program under the Penal Code, ... shall not prohibit any agency established under  
11 Division 2 (commencing with Section 500) of this code, or any initiative act referred  
12 to in that division, from taking disciplinary action against a licensee or from denying a  
13 license for professional misconduct, notwithstanding that evidence of that misconduct  
14 may be recorded in a record pertaining to an arrest.

15 ...  
16 FIRST CAUSE FOR DENIAL OF REGISTERED NURSE APPLICATION

17 (Criminal Conviction)

18 10. Applicant's registered nursing license application is subject to denial pursuant to  
19 Code sections 2761, subdivision (a) and (f), 2762, subdivision (c), and 480, subdivision (a)(1),  
20 based on the following:

21 a. On or about April 25, 2002, in a criminal proceeding entitled *The People of the State*  
22 *of California v. Briana Abela Webster*, Santa Clara County Superior Court Case No CC15468,  
23 Applicant pled no contest to a violation of Vehicle Code section 23152(b) [driving with a blood  
24 alcohol level of 0.08% or greater], a misdemeanor. Applicant was placed on three years  
25 probation, ordered to attend alcohol treatment classes and pay court imposed fines.

26 The circumstances in support of this plea are as follows: On May 4, 2001, Applicant was  
27 observed travelling at 80-85 miles per hour on Highway 101 in San Jose, California. She  
28 displayed objective signs of alcohol intoxication, failed field sobriety testing at the scene, with  
29 breath alcohol results of 0.086 % and 0.080%.

30 ///



1 On or about October 7, 2009, the trial court granted Applicant's request for a record  
2 clearance pursuant to section 1203.4 of the Penal Code.

3 b. On or about July 18, 2002, in a criminal proceeding entitled *The People of the State of*  
4 *California v. Briana Abela Webster*, Santa Clara County Superior Court Case No FF298682,  
5 Applicant pled no contest to a violation of Vehicle Code section 14601.5(a) [driving on a  
6 suspended license]. Applicant was sentenced to five days in county jail and ordered to pay court  
7 imposed fines.

8 On or about October 7, 2009, the trial court granted Applicant's request for a record  
9 clearance pursuant to section 1203.4 of the Penal Code.

10 SECOND CAUSE FOR DENIAL OF REGISTEED NURSE APPLICATION

11 (Unprofessional Conduct – Possession of a Dangerous Drug/Controlled Substance)

12 11. Applicant's registered nursing license application is subject to denial pursuant to  
13 Code sections 2761, subdivision (a), 2762, subdivision (a), 4060, and 480, subdivisions (a)(3)(A)  
14 and (a)(3)(B), based her possession of methamphetamine, a dangerous drug/controlled substance.  
15 The facts in support of this cause for discipline are that on June 15, 1999, Applicant was arrested  
16 by San Jose police for being under the influence of methamphetamine and being in possession of  
17 methamphetamine.<sup>1</sup>

18 THIRD CAUSE FOR DENIAL OF REGISTERED NURSE APPLICATION

19 (Unprofessional Conduct – Use of Dangerous Drug/Controlled Substance and Alcohol)

20 12. Applicant's registered nursing license application is subject to denial pursuant to Code  
21 sections 2761, subdivision (a), 2762, subdivision (b), and 480, subdivisions (a)(3)(A) and  
22 (a)(3)(B), based on her use of methamphetamine, a dangerous drug/controlled substance and  
23 alcohol to an extent or in a manner dangerous or injurious to herself and/or the public. The facts  
24 in support of this cause for discipline are set forth above in paragraphs 10 and 11, and are  
25 incorporated herein by reference.

26 ///

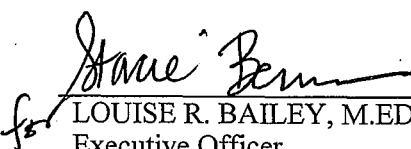
27 <sup>1</sup> Methamphetamine is a Schedule II controlled substance pursuant to Health and Safety  
28 Code section 11055(d)(2) and is a dangerous drug pursuant to Code section 4022.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Brianna Adela Hammer for a registered nurse license; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 11/16/2012

*for*   
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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Hammer.docx